IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.05.2017

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.12915 and 12916 of 2017
and
WMP.Nos.13779 and 13780 of 2017

M/s.Faizal Traders
represented by its Proprietor
... Petitioner in both WPs.

Vs

1.The Tamil Nadu Sales Tax Appellate Tribunal,
(Main Bench)
represented by its Secretary,
City Civil Court Buildings,
Chennai - 600 104.

2.The Deputy Commercial Tax Officer,
Panruti Town,
Panruti.
... Respondents in WPs.

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records of the first respondent in T.P.No.7/2017 in T.A.No.20/2017 and T.P.No.8/2017 in T.A.No.21/2017 respectively, quash the orders dated 27.04.2017 passed therein and further direct the second respondent to accept immovable property as security for the penalty amount of Rs.7,54,038/- and Rs.5,94,948/- respectively pending disposal of the second appeals on the files of the first respondent.

For Petitioner : Mr.P.V.Sudakar

For Respondents : Mr.S.Kanmani Annamalai, AGP(T)

COMMON ORDER

The petitioner has filed these writ petitions, to quash the orders dated 27.04.2017 passed by the first respondent in T.P.No.7/2017 in T.A.No.20/2017 and T.P.No.8/2017 in T.A.No.21/2017 respectively and to direct the second respondent to accept immovable property as security for the penalty amount of Rs.7,54,038/- and Rs.5,94,948/- respectively, pending disposal of the second appeals on the file of the first respondent.

2.It is the case of the petitioner that the petitioner is a dealer in two wheeler spare parts and is registered with the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In respect of the assessment years 2011-12 and 2012-13, the petitioner had filed its monthly returns reporting their total and taxable turnover. Upon cross verification of the same, the second respondent initiated reassessment proceedings, during the course of which, certain defects have been pointed out. Subsequently, the second respondent passed assessment orders, proposing to levy tax and penalty. Challenging the said assessment orders, the petitioner filed statutory appeals in A.P.Nos.229/2014 and 63/2015 before the Appellate Authority, who, by orders dated 28.01.2016, dismissed the appeals and confirmed the orders, levying tax and penalty. Aggrieved over the same, the petitioner filed second appeals in T.A.Nos.20 and 21 of 2017 along with stay petitions in T.P.Nos.7 and 8 of 2017 before the first respondent. By orders dated 27.04.2017, the first respondent has directed the petitioner to furnish a bank guarantee for the entire penalty amount within a period of 21 days from the date of receipt of the order, as a condition for grant of stay. Hence, the petitioner is before this Court with the present writ petitions.

3.The learned counsel for the petitioner submitted that though the petitioner has already remitted the entire tax amount and the stay petitions are only in respect of penalty amount, the first respondent has directed the petitioner to furnish a bank guarantee for the entire penalty amount as a pre-condition for grant of stay, which is contrary to law. Therefore, he prayed to modify the said condition imposed on the petitioner.

4.Heard the learned Additional Government Pleader appearing for the respondents, who has no objection in modifying the condition imposed by the first respondent.

5.Considering the submissions made on either side and also taking note of the fact that the petitioner has already remitted the entire tax amount, this Court is inclined to modify the condition imposed on the petitioner, while granting an order of stay by the first respondent.

6.Accordingly, the orders dated 27.04.2017 passed by the first respondent in T.P.No.7/2017 in TA No.20/2017 and T.P.No.8/2017 in TA No.21/2017, are modified as follows:

> "The petitions are allowed with condition to execute personal bond to the value of the penalty amount of Rs.7,54,038/- and Rs.5,94,948/- respectively, to the satisfaction of concerned

Assessing Officer within a period of 21 days from the date of receipt of a copy of this order".

7.Both the writ petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To
1.The Secretary,
The Tamil Nadu Sales Tax Appellate Tribunal,
(Main Bench)
City Civil Court Buildings,
Chennai - 600 104.

2.The Deputy Commercial Tax Officer,
Panruti Town,
Panruti.

+1cc to Mr.P.V.Sudhakar,Advocte sr.37595

+1cc to Special Government Pleader sr.37663

W.P.Nos.12915 and 12916 of 2017

nm(co)
ss(24/5/2017)